

# Revenue Review

Tennessee Department of Revenue

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REVENUE ...  
*Working For You*



December 2007

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## Sales Tax on Food Reduced to 5.5 Percent

Effective Jan. 1, 2008, the state sales tax on food will be reduced from six percent to 5.5 percent. Food and food ingredients for human consumption will be taxed at 5.5 percent of the sales price per each single article of food or food ingredients. According to Tenn. Code Ann. 67-6-228, "food and food ingredients" are substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

Prepared food, alcoholic beverages, candy, dietary supplements and tobacco remain subject to sales tax at the rate of seven percent.

- "Candy" is defined as a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.
- "Dietary supplement" means any product, other than tobacco, intended to supplement the diet. These supplements are typically ingested in tablet, capsule, powder, softgel, gelcap or liquid form and are labeled as a dietary supplement according to "Supplements Facts" box found on the product.

"Prepared foods" may include food sold in a heated state or heated by the seller, two or more food ingredients mixed or combined by the seller for sale as a single item; or food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. Sliced, repackaged or pasteurized foods are not included in the prepared food category.

## Revenue Ramps Up Preparations for Agricultural Exemption

The Department of Revenue's Taxpayer and Vehicle Services Division is in the process of educating and registering qualified farmers, nursery operators and timber harvesters regarding upcoming changes in Tennessee's agricultural exemptions from sales and use tax. Effective Jan. 1, 2008, those purchasing qualified farm equipment, seed and other tax-exempt farm and nursery supplies must present proof of their status as an exempt farmer, nursery operator or timber harvester by providing, directly to the seller, a

copy of their Agricultural Sales and Use Tax Certificate of Exemption.

The department mailed Agricultural Sales and Use Tax Certificates of Exemption to those who were determined automatically to qualify for the exemption. Those who have already received their certificate do not need to fill out an application or file additional documentation with the department. Receipt of a certificate serves as the notice of sales tax exempt status.

Those who have not been determined automatically to qualify for the exemption are required to fill out an application and file it with the department to receive a certificate authorizing tax-exempt purchases. Those who believe they qualify (please see qualification requirements below) will be able to print an application at Revenue's Web site, [www.Tennessee.gov/revenue](http://www.Tennessee.gov/revenue), after Nov. 15.

In order to qualify for the exemption, a person or business must meet at least one of the following criteria: own or lease land where \$1,000 or more of agricultural products are produced or sold during a year; provide for-hire agricultural services of plowing, planting, harvesting, growing, raising, or processing agricultural products; own land that qualifies for taxation under the Agricultural, Forest and Open Space Land Act of 1976; file Schedule F or farm rental activity Form 4835 or Schedule E on Federal tax returns; or otherwise establish to the commissioner that he or she is in business of producing agricultural commodities. Backyard gardeners and other purchasers not meeting one of these criteria will not qualify for the exemption. An Important Notice has been posted at the department's Web site that includes further details about qualification requirements and tax-exempt purchases.

The new exemption certificate will ensure that qualified farmers, nursery operators and timber harvesters are easily able to take advantage of sales and use tax exemptions for eligible purchases. Exemptions for eligible purchases have been expanded to conform to the Streamlined Sales and Use Tax Agreement. Machinery or appliances used directly for producing agricultural and nursery products are no longer required to cost more than \$250 to be exempt. The previous

## IRS Starts e-Newsletter Just for Small Businesses

The IRS has started a news service, *e-News for Small Business*. Distributed every Wednesday, it brings timely, useful tax information right to your computer. To start your FREE subscription to e-News, just go to IRS.gov at <http://www.irs.gov/businesses/small/content/0..id=154826.00.html> and enter your e-mail address.

1.5 percent sales tax rate has been repealed and a total exemption is available to qualified persons for electricity, natural gas and liquefied gas, as well as coal, wood, wood products or fuel oil used as energy fuel to produce food or fiber for human or animal consumption or to aid in growing horticultural products. Repair and replacement parts and labor continue to be exempt on all qualified farm machinery and equipment. Dyed diesel fuel used for agricultural purposes continues to be exempt from sales and use tax and will be exempt for timber harvesting as of Jan. 1. Additionally, all-terrain vehicles (ATVs) used directly in the production of agricultural or nursery products will be tax-exempt, with qualified purchasers no longer required to pay the tax up front and file later for a refund.

Items that are exempt from sales and use tax per Public Chapter 602, Section 79, when sold to persons who have received an Agricultural Sales and Use Tax Certificate of Exemption, include:

- Any appliance used directly and principally for producing agricultural products (does not include autos, trucks, household appliances or property that becomes real property, such as barns, sheds and fencing)
- Grain bins and attachments
- Aircraft designed for crop dusting
- Equipment used for harvesting timber (does not include trailers and trucks for transporting)
- Livestock trailers
- Self-propelled fertilizer or chemical application equipment
- Systems for environment control, feeding, watering and egg conveyance for poultry
- Replacement parts and labor for previously qualifying equipment
- Gas or diesel fuel used for agricultural purposes (does not include pre-mixed gas and oil of one gallon or less)
- Seed, seedlings, plants, fertilizer and pesticides used to produce food or fiber, including tobacco, for human or animal consumption
- Farm containers and plastic or canvas covers used in raising plants, including tobacco, for human or animal consumption
- Feeds and drugs for livestock
- Agri-sawdust
- Electricity, gas, propane, coal, wood and fuel oil used in the production of food or fiber for human or animal consumption or in the production of nursery and greenhouse crops

A copy of the Agricultural Sales and Use Tax Certificate of Exemption issued by the Department of Revenue, a copy of a wallet-sized exemption card also provided by Revenue or a fully completed Streamlined Sales and Use Tax Certificate of Exemption, which includes the exemption number on the certificate or card issued by the department, must be provided when making purchases after Jan. 1, 2008. Sellers must keep copies of one of these documents on file and include the buyer's name, address and description of tax-exempt purchases on each invoice. Farmer's affidavits will no longer be valid after Jan. 1, 2008. Additionally, the exemption cannot be used by anyone other than the certificate holder.

The new law allows for total, rather than partial, exemption for specific qualifying purchases and keeps current exemptions in place. The new exemption will make transactions more convenient for farmers who can enjoy automatic tax-free purchases, instead of filing refunds with the department for taxed purchases.

## Common Mistakes in Franchise and Excise Filing

*The Department of Revenue continually strives to improve its services and effectiveness. Fostering compliance with our tax laws benefits both the state and its taxpayers. As part of our efforts to foster greater compliance, the department is including a short series of articles in its newsletter that highlight common state tax preparation errors of which practitioners and taxpayers should be aware. The focus for this edition is on franchise and excise taxes.*

### Filing Requirements

There are two errors that the department commonly sees related to franchise and excise tax filing requirements: federally disregarded entities not filing and taxpayers not correctly filing separately or combined as required. Federally disregarded entities are not disregarded for franchise and excise taxes except for SMLLCs whose single members are corporations and must file franchise and excise tax returns. Additionally, under Tennessee law, each taxpayer is considered a separate, single entity for franchise and excise tax filing purposes and must file as such. The one exception is a financial institution, which must file a combined return.

### Estimated Payments

The department also commonly sees errors related to estimated franchise and excise tax payments. The first error is taxpayers simply not making estimated payments. No estimates are required if the tax year covers five months or less. However, four quarterly estimates are required if the current year's total franchise, excise tax liability is \$5,000 or more.

Taxpayers must also ensure that they make adequate estimated payments and that estimated payments are filed in a timely manner. Each estimated payment must be the lesser of 25 percent of the franchise and excise tax liability in the prior year (annualized if a short-period) or current year. Estimated payments are due on or before the 15th day of the fourth, sixth or ninth month of tax year and of the first month of the next succeeding tax year. If an estimated payment is deficient or delinquent, penalty and interest will accrue until the due date of the return.

## Payment Warehousing, Credit Card Option Added to Sales and Use Portal

The Tennessee Department of Revenue recently added payment warehousing to its sales and use tax online filing site. Payment warehousing allows a taxpayer to complete the tax return in advance and schedule the payment to be processed on the due date. This allows taxpayers to better manage their filing obligations while maintaining access to their money as long as possible. This and other options are available at the department's Web site, [www.Tennessee.gov/revenue](http://www.Tennessee.gov/revenue). Like Revenue's other electronic applications, this option is convenient, easy and accurate, which reduces the number of errors and cost of the filing process.

"The department received a great deal of feedback from taxpayers who requested an application that allows them to file and pay online ahead of time while postponing payment until the due date," said Revenue Commissioner Reagan Farr. "I strongly encourage taxpayers to continue voicing their opinions to the department, as it is through feedback like this that the department knows what is needed to implement new systems."

This legislative session, filing and payment of sales and use tax returns electronically became mandatory for taxpayers whose average monthly liability is \$2,500 or more. The previous threshold was an average monthly liability of \$5,000. The sales and use tax e-file application has been streamlined to ease the process of online filing to aid those who are mandated to file electronically.

In order to assist taxpayers with compliance to electronic filing, the Department of Revenue provides computer access in its offices in Chattanooga, Knoxville, Jackson, Johnson City, Memphis and Nashville. The department also offers an electronic commerce hot line to assist taxpayers and tax practitioners at (866) 368-6374. Nashville-area and out-of-state callers should dial (615) 253-0704. All taxpayer data, whether paper or electronic, filed with the Department of Revenue is confidential data protected under Tennessee law.

In addition, many tax payments can be made by credit card using the Department of Revenue's Web site. Sales and use tax, consumer use tax, individual income tax, professional privilege tax and bill payments can all be paid by credit card. The department continues to work to provide convenient on-line applications for taxpayers. Mastercard, American Express and Discover Card are accepted. A processing fee of 2.49 percent will be charged.

## Tennessee Goes Smoke-Free

On Oct. 1, the Non-Smokers Protection Act became effective throughout Tennessee. Although this is not a Department of Revenue statute, many taxpayers will be affected by the smoking ban. This new state law bans smoking in enclosed public places and places of employment. The goal of the law is to protect Tennesseans from the potentially deadly effects of secondhand smoke.

While there are a few exceptions written into the law, smoking is now prohibited in most facilities that are open to the public in Tennessee. These establishments include, but are not limited to:

- Restaurants
- Public and private schools
- Health care facilities
- Hotels and motels
- Retail stores and shopping malls
- Convenience and grocery stores
- Sports arenas, including enclosed public areas in outdoor arenas
- Restrooms, lobbies, reception areas, hallways and other common areas of buildings
- Child care and adult day care facilities

The law provides for owners and operators of certain facilities to continue to allow smoking if they choose to do so. Examples include:

- Bars or other businesses that only admit people 21 years of age and older (including both patrons and employees)
- Non-enclosed areas of public places, including open air patios, porches or decks, so long as smoke from these areas does not infiltrate into areas where smoking is prohibited
- Smoking rooms in hotels and motels (up to 25 percent of a hotel or motel's rooms may be designated as smoking rooms)
- Businesses with three or fewer employees, but only in an enclosed room not accessible to the public and where smoke from

- such a room does not infiltrate public areas
- Private clubs
- Private homes and residences, except those used for child care or day care

To comply with the law, employers and business owners are required to post "No Smoking" signs at every entrance; notify and inform all existing and prospective employees that smoking is prohibited; and inform patrons and customers who are found smoking on the premises that it is against the law.

Both businesses and individuals who fail to abide by the law face penalties. An individual who smokes in area where smoking is prohibited is subject to a \$50 fine. A business that knowingly fails to comply with the law is subject to a written warning for a first violation in a 12-month period; a fine of \$100 for a second violation in a 12-month period; and a penalty of \$500 for a third or subsequent violation in a 12-month period.

The Department of Health and the Department of Labor and Workforce Development are charged with enforcement of the new law. Each department is responsible for enforcing the smoking ban in facilities it regulates. Officials from these departments monitor compliance during regular inspections of facilities and investigate complaints of violations as needed.

Complaints about violations of the Non-Smokers Protection Act may be filed online, by written form or by calling toll-free 1-800-293-8228 starting Oct. 1, 2007.

Much more information on the Non-Smokers Protection Act is available on the Department of Health Web site at <http://health.state.tn.us/smokefreetennessee/>.

## Motor Carrier Section Moves to Plus Park

Revenue's Motor Carrier section of Taxpayer and Vehicle Services has moved from its former Foster Avenue location to 301 Plus Park Boulevard in Nashville. Operations at the new location officially began on Tuesday, May 29, 2007. The title and registration division from the Department of Safety was moved to the Department of Revenue in accordance with Governor Phil Bredesen's Executive Order No. 36, effective July 1, 2006.

The transfer of the Division of Title and Registration, which included the Motor Carrier Section, from the Department of Safety to the Department of Revenue was done in the interest of efficiency and better coordination of functions within state government. The division was combined with Revenue's already existing Division of Taxpayer Services, and was renamed the Division of Taxpayer and Vehicle Services. As evidence of the effectiveness of the transfer, Vehicle Services celebrated bringing a backlog of 60,000 titles to zero in February 2007.

The Motor Carrier Section provides base-state vehicle registration and titling, quarterly fuel tax reporting and proof of insurance requirements for commercial vehicles.

For driving directions and other information about the Motor Carrier Section, please visit [www.Tennessee.gov/revenue](http://www.Tennessee.gov/revenue).

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[www.Tennessee.gov/revenue](http://www.Tennessee.gov/revenue)

## Commissioner Farr: Use Tax Benefits Tennessee Businesses

As the holidays approach, many Tennesseans go online to purchase gifts, though their state tax obligation is not disregarded. When Tennessee consumers purchase merchandise online or through a catalog and sellers do not collect Tennessee sales tax, customers who buy these items have a legal obligation to file and pay use tax on the merchandise.



The essential purpose of the use tax is the recovery of lost sales tax revenue and an important means to protect business owners in Tennessee from unfair competition from businesses in other states that may not charge tax. In fact, our department receives numerous complaints each year about sales lost to out-of-state businesses because of the tax that in-state businesses are required to collect. These local merchants not only collect the sales tax, but also pay property taxes, employment taxes, provide jobs and serve the community in other ways. Without enforcing the use tax, these local businesses would not survive.

Several years ago our department was contacted by Tennessee furniture dealers who were losing sales to North Carolina dealers that were not required to collect our taxes. After receiving numerous complaints, the Department of Revenue began a new compliance effort that allowed our personnel to review bills of lading, or a receipt for transfer of goods via interstate travel, from transportation companies. Thus, the customer receives a bill for tax plus interest. As a result of this and similar outreach, the state has been successful in registering several out-of-state companies to collect Tennessee sales tax. By encouraging out-of-state vendors to register voluntarily, even if they are not required to do so, tax is collected immediately, preventing customers from being billed later for use tax, as well as penalty and interest assessed.

File your use tax online by visiting the department's Web site, [www.Tennessee.gov/revenue](http://www.Tennessee.gov/revenue). Credit card and ACH debit are accepted methods of payment.

### Online Sales Tax Filing Statistics

Month	Number of Returns	Total of Amount Collected
May 2007	22,441	\$304,866,276
June 2007	22,303	\$326,269,680
July 2007	24,456	\$336,382,622
August 2007	23,196	\$325,000,000
September 2007	23,589	\$335,659,106
October 2007	29,799	\$335,559,720

## Upcoming Sales Tax Holidays Offer More Savings to Tennesseans



[www.tntaxholiday.com](http://www.tntaxholiday.com)

Between the one-time sales tax holiday in April and the second annual sales tax holiday in August, Tennesseans saved millions in back to school preparations and other purchases in 2007.

Mark your calendars now: The state will have another sales tax holiday from **March 21-23, 2008**. The March 2008 weekend will occur only once and exempt the same items that qualify for the annual August holiday:

- School supplies – \$100 or less per item
- Art supplies – \$100 or less per item
- Clothing – \$100 or less per item
- Computers – \$1,500 or less per bundled package

Visit the department's Web site to learn more about upcoming sales tax holidays at [www.Tennessee.gov/revenue](http://www.Tennessee.gov/revenue).

***Do you want to receive updates from the Department of Revenue via e-mail? Please sign up to be included in the department's listserv at [www.Tennessee.gov/revenue](http://www.Tennessee.gov/revenue). News and updates can be sent immediately to your e-mail address.***

## Contact Us

- Taxpayer Services hot line: Statewide toll-free (800) 342-1003; Nashville-area and out-of-state callers, dial (615) 253-0600
- Vehicle Services hot line: Statewide toll-free (888) 871-3171; Nashville-area and out-of-state callers, dial (615) 741-3101
- Online tax help by e-mail: [TN.Revenue@state.tn.us](mailto:TN.Revenue@state.tn.us)
- Streamlined Sales Tax hot line: Statewide toll-free (877) 250-2299; Nashville-area and out-of-state callers, dial (615) 253-0752
- Streamlined Sales Tax online assistance by e-mail: [Streamlined.Salestax.QandA@state.tn.us](mailto:Streamlined.Salestax.QandA@state.tn.us)
- Tax practitioner hot line: Statewide toll-free (800) 387-8395; Nashville-area and out-of-state callers, dial (615) 253-0700
- Local government hot line: (866) 562-2549
- E-mail updates: Visit our Web site, [www.Tennessee.gov/revenue](http://www.Tennessee.gov/revenue), to subscribe
- Electronic commerce hot line: Statewide toll-free (866) 368-6374; Nashville-area and out-of-state callers, dial (615) 253-0704
- Speakers bureau: (615) 532-4975
- Tax fraud hot line: Report tax fraud by calling (800) FRAUDTX (372-8389)



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